

January 7, 2015

Administrative Cause No. 13-204P

Petition for Rule Change

Terry R. Warnock has petitioned The Department of Natural Resources Commission to modify or change Rule 312 IAC 8-2-8 section (c) related to motorized carts. Paragraph (c), presently states:

“(c) A person must not operate a motorized cart on a DNR property except as follows:

(1) The person must demonstrate both of the following:

(A) The person holds a valid driver’s license.

(B) The person:

(i) is at least sixty-five (65) years of age that is evidenced by the valid driver’s license; or

(ii) has a disability, as defined by the federal Social Security Administration guidelines (42 U.S.C.

416) that is evidenced by documentation from the Social Security Administration;

A person must not operate a motorized cart other than within a campground.”

The Petitioner asks that we:

1. Allow a person accompanying a disabled person to drive a motorized cart as long as that person also holds a valid driver’s license; and
2. Allow motorized carts to be driven anywhere within the state park.

Representatives from the Divisions of State Parks and Reservoirs, Forestry, Fish and Wildlife, Law Enforcement and Safety and ADA Compliance have reviewed this request. We are all in agreement that allowing a person with a valid driver’s license to drive the cart transporting the person with a mobility disability would be an acceptable response to this Petition. However, the limitation of operating within the campground remains necessary for the safety and operational parameters of the DNR.

In addition to the Regulations cited for not operating a motorized cart outside of the campground, State Law (IC 9-21-1-3) regarding public roads mandates these limitations. The reviewers took into consideration the impact motorized carts would have on each property given the specific conditions of the area. To give a blanket approval to allow a motorized cart anywhere creates an unsafe environment; presents an undue administrative burden on the properties; diminishes the enjoyment of the visiting public and would compromise our mandate to protect the natural environment.

The review committee believes the request to allow a licensed driver to operate the motorized cart may be accomplished by the following revisions to section (c) of the Rule. This will enable a person with a mobility disability who may not be able to operate the motorized cart, to still enjoy the access such use will provide.

During the course of reviewing Petitioner’s request, the committee looked at IC 14-19-1-1, which requires a person with a mobility disability to be identified as a person who “has a disability as defined by the federal Social Security Administration (SSA) guidelines (42 U.S.C. 416).” This SSA definition excludes anyone who

might be employed. Besides excluding a significant number of folks with the need from being able to operate a golf cart, the use of the SSA definition is in direct contradiction with the Americans with Disabilities Act (ADA).

| Therefore, the committee's recommendation is to propose legislative action to change the statute to define these persons as "a person who has a mobility disability as defined in Title II of the Americans with Disabilities Act, 28 CFR, § 35.137" and then, subsequently, revise the rule to reflect this change and be in agreement with the statute. Incorporating the ADA definition will then include those who qualify under the SSA definition as well as a person with a significant mobility disability, but is employed.

Once these changes are made, we believe this regulation will maintain the public's safety, have little or no negative impact on the Department's resources, is the best Management practice and will allow for the use of carts by all persons with significant mobility disabilities.